

Kip Evan Steinberg (SBN 096084)
LAW OFFICE OF KIP EVAN STEINBERG
Courthouse Square
1000 Fourth Street, Suite 600
San Rafael, CA 94901
Telephone: 415-453-2855
Facsimile: 415-456-1921
kip@steinberg-immigration-law.com

Attorney for Plaintiffs OUSSAMA MANNAA, SHIRLEY AZZGHAYER

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OUSSAMA MANNAA, SHIRLEY AZZGHAYER

Plaintiffs,

v.

MICHAEL CHERTOFF, Secretary
Department of Homeland Security
ROSEMARY MELVILLE District Director
USCIS San Francisco District Office
EMILIO T. GONZALEZ, Director, USCIS
ALBERTO GONZALES, Attorney General,
Department of Justice
Defendants

Civil Action No.

**COMPLAINT FOR
MANDAMUS**

IMMIGRATION CASE

I. INTRODUCTION

This action is brought by Plaintiff Oussama Mannaa to compel Defendants to process the necessary background checks and adjudicate his application for Adjustment of Status to Permanent Residence (Form I-485) under 8 U.S.C. §1255. Plaintiff's application is based on his marriage to a United States citizen. His application was filed on or about June 24, 2004 with the San Francisco District Office of the United States Citizenship and Immigration

1 Services ("USCIS"). Plaintiff has been informed that his application is pending
2 an FBI name check. Defendants have failed to complete his background check
3 and failed to adjudicate the application.

4 This action is also brought by Plaintiff Shirley Azzghayer to compel
5 Defendants to process the Petition For Alien Relative (Form I-130) under 8
6 U.S.C. §1154(a) and (b) and 8 C.F.R. §204.2(a)(3) to classify her husband,
7 Oussama Mannaa, as the spouse of a United States citizen. The I-130 visa
8 petition was filed on or about June 24, 2004 together with the Form I-485
9 mentioned above with the San Francisco District Office of the United States
10 Citizenship and Immigration Services ("USCIS"). Plaintiffs have been
11 interviewed by Defendants concerning the I-130 visa petition. Plaintiffs have
12 not been informed of the status of this petition.

13 14 **II. PARTIES**

15 1. Plaintiff, Oussama Mannaa, is currently an applicant for adjustment
16 of status to lawful permanent residence as the spouse of a United States
17 citizen. He resides in San Mateo, California.

18
19 2. Plaintiff, Shirley Azzghayer, is a United States citizen. She is the
20 spouse of Oussama Mannaa. She resides in San Mateo, California.

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22 3. Defendant Michael Chertoff is sued in his official capacity as the
23 Secretary of the Department of Homeland Security. In this capacity he has
24 responsibility for the administration and enforcement of the immigration laws
25 pursuant to 8 U.S.C. §1103(a) including the accurate, efficient and secure
26 processing of immigration benefits.

4. Defendant Rosemary Melville is sued in her official capacity as the District Director of the San Francisco District Office of the United States Citizenship and Immigration Services, an agency within the Department of Homeland Security, which is charged by law with the duty of adjudicating I-485 applications for adjustment of status to lawful permanent residence under 8 U.S.C. §1255.

5. Defendant Emilio T. Gonzalez is sued in his official capacity as the Director of the United States Citizenship and Immigration Services, an agency within the Department of Homeland Security, which is charged by law with the duty of adjudicating I-485 applications for adjustment of status to lawful permanent residence under 8 U.S. C. §1255.

6. Defendant Alberto Gonzales is sued in his official capacity as the Attorney General of the United States and is charged with the authority and duty to direct, manage, and supervise all employees and all files and records of the Department of Justice including security checks required to obtain an immigration benefit such as adjustment of status to lawful permanent residence. He oversees the FBI which is responsible for conducting both criminal record checks and the National Name Check Program (“NNCP”). The NNCP disseminates information from the FBI’s Central Records System in response to requests submitted by federal agencies, including USCIS.

III. JURISDICTION

7. This is a civil action brought pursuant to 28 USC §§ 1331 and 1361 to redress the deprivation of rights, privileges and immunities secured to

1 Plaintiffs, by which jurisdiction is conferred, to compel Defendants to perform
2 duties owed to Plaintiffs.

3
4 8. Jurisdiction is also conferred by 5 USC §§ 555(b) and 704.
5 Plaintiffs are aggrieved by adverse agency action in this case, as the
6 Administrative Procedures Act requires in order to confer jurisdiction on the
7 District Courts. 5 USC § 702 *et seq.*

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9 9. The aid of the Court is invoked under 28 USC §§ 2201 and 2202,
10 authorizing a declaratory judgment.

11
12 10. Costs and attorneys fees will be sought pursuant to the Equal
13 Access to Justice Act, 5 USC § 504, and 28 USC §2412(d), *et seq.*

14 15 **IV. VENUE**

16 11. Venue is proper in the Northern District of California since Plaintiffs
17 reside in San Mateo, California.

18 19 **V. EXHAUSTION OF REMEDIES**

20 12. Plaintiffs have exhausted their administrative remedies. Plaintiffs
21 and their attorney have inquired concerning the status of their applications to
22 no avail. (*See Attachment s A & B*) Plaintiffs have no other adequate remedy
23 available for the harm they seek to redress - the failure of Defendants to
24 adjudicate their visa petition and application for adjustment of status to
25 permanent residence in a timely manner.

VI. REMEDY SOUGHT

13. Plaintiff Mannaa seeks to have the Court compel Defendants to take whatever steps are necessary to adjudicate his pending I-485 application forthwith.

14. Plaintiff Azzghayer seeks to have the Court compel Defendants to take whatever steps are necessary to adjudicate her I-130 visa petition forthwith.

VII. STATEMENT OF FACTS

15. Plaintiff Azzghayer is a United States citizen. *(See Attachment C)*

16. Plaintiff Mannaa is a native of Lebanon. He originally entered the United States on December 31, 2001 with an F-1 student visa issued by the U.S. Embassy in Beirut, Lebanon. *(See Attachment D)*

17. On information and belief, the State Department cleared Plaintiff Mannaa's security background checks prior to issuing him an F-1 visa.

18. He attended Golden Gate University in San Francisco and graduated in 2005 with a Masters Degree in Database Development and Administration. *(See Attachment E)*

19. Plaintiffs were married on August 29, 2003 in San Francisco, California. *(See Attachment F)* They have a daughter, Layal Amal Mannaa, who was born on June 7, 2007 in San Francisco, California. *(See Attachment G)*

1 20. On or about June 24, 2004, Plaintiff Azzghayer filed a Petition For
2 Alien Relative (Form I-130) on behalf of her husband under 8 U.S.C. §1154(a),
3 8 U.S.C 1154(b), and 8 C.F.R. §204.2(a)(3) with the USCIS San Francisco
4 District Office.

5
6 21. On or about June 24, 2004 Plaintiff Mannaa applied for adjustment
7 of status to lawful permanent residence under 8 U.S.C. §1255 and 8 CFR §
8 245.1 with the USCIS San Francisco District Office. According to the receipt
9 for the I-485 application, Plaintiff's alien registration number is A96 398 580.
10 *(See Attachment H)*

11
12 22. Defendants have taken Plaintiff's fingerprints multiple times on the
13 following dates: July 8, 2004, March 28, 2006, April 19, 2006, July 24, 2007
14 *(See Attachment I)*

15
16 23. Plaintiffs were interviewed at the USCIS District Office in San
17 Francisco in either 2004 or 2005. Plaintiff's do not recall the exact date of the
18 interview.

19
20 24. On information and belief, the Petition For Alien Relative (Form I-
21 130) remains pending. Plaintiffs have not been notified of its exact status.

22
23 25. At this interview Plaintiff Mannaa was informed that his application
24 for adjustment of status could not be approved since his FBI name check was
25 pending.

1 31. It is the sense of Congress that the processing of an immigration benefit
2 application should be completed not later than 180 days after the initial filing of
3 the application. 8 U.S.C. § 1571(b).

4
5 32. Plaintiff Manna wishes to become a U.S. citizen as soon as possible
6 and enjoy all the liberties and freedoms attendant thereto, including the right to
7 vote, jury service, and the freedom to travel abroad and return to the United
8 States without fear of exclusion. To be eligible for naturalization, Plaintiff must
9 have resided in the United States for three years as a lawful permanent resident.
10 8 U.S.C. §1430 (a). Plaintiff's ability to apply for naturalization has been delayed
11 since his application for permanent residence has not been adjudicated.

12
13
14 33. Plaintiff has also been harmed by Defendants' inaction because
15 he is required to apply each year for employment authorization (Form I-765)
16 under 8 CFR 274a.12(c)(9) and "advance parole" (Form I-131), which is a
17 permit to travel abroad and return to this country while her application is
18 pending , under 8 U.S.C. §1182 (d)(5)(A) . *(See Attachment L)*

19
20 34. These applications are costly and time consuming. The filing fees
21 for these applications recently increased to \$340 and \$305, respectively,
22 effective July 30, 2007 (*See Attachment M*)

23
24 35. Plaintiffs have also been damaged by Defendants' inaction in that:
25 Plaintiff Manna's immigration status is considered "temporary" for an
26

1 indefinite period of time and he and his wife are thereby deprived of the
 2 “peace of mind” to which they are entitled.

3
 4 36. The Defendants, in violation of the Administrative Procedures Act, 5
 6 U.S.C. §§555(b) and 701 et seq., are unlawfully withholding or unreasonably
 7 delaying action on Plaintiffs’ I-130 petition and I-485 application and have failed
 8 to carry out the adjudicative functions delegated to them by law.

9 10 **VII. PRAYER**

11 37. WHEREFORE, in view of the arguments and authority noted herein,
 12 Plaintiff respectfully prays that the Defendants be cited to appear herein and that,
 13 upon due consideration, the Court enter an order:

14
 15 (a) requiring Defendants to adjudicate Plaintiff Azzghayer’s I-130 visa
 16 petition forthwith

17 (b) requiring Defendants to adjudicate Plaintiff Mannaa’s I-485 application
 18 forthwith

19 (c) awarding Plaintiff reasonable attorney’s fees and costs of court and

20 (d) granting such other relief at law and in equity as justice may require.
 21
 22

23 DATED: August 29, 2007 _____ /s/ _____

24 _____ Kip Evan Steinberg
 25 Attorney for Plaintiffs
 26 Oussama Maanaa and Shirley
 27 Azzghayer

LIST OF ATTACHMENTS

(pp. 1-31)

- A Affidavit of Attorney Roger S. Kubien
- B Case status inquiry
- C U.S. passport and birth certificate of Shirley Azzghayer
- D F-1 visa for Ossama Mannaa
- E Proof of Masters Degree from Golden Gate University
- F Marriage Certificate
- G Birth Certificate of daughter, Layal Amal Mannaa
- H Letter from USCIS dated June 24, 2004 confirming filing of
Application for Adjustment of Status (Form I-485)
- I Evidence of fingerprinting multiple times
- J S.F. District Office Processing Dates Posted August 16, 2007
- K Letters from USCIS stating that I-485 application is pending security
background check
- L Evidence of filing extensions of employment authorization
(Form I-765) and advance parole (Form I-131)
- M USCIS Fee Schedule effective July 30, 2007

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Mannaa v. Chertoff
Complaint for Mandamus